

**SJ 7 Meeting
Meeting Minutes
December 4-5, 2007**

Work Group members present: Jeff Buska, Jill Caldwell, Becky Fleming-Siebenaler, Grace Bowman, Betty Beverly, George Groesbeck, Gayla Brown, Webb Brown, Jerry Daugett, Shirley Powell, Bob Ross, Karolyne Redding, Casey Blumenthal, Mike Hanshew, Al Ward, (Claudia Clifford), Rose Hughes.

December 4, 2007

Welcome & Brief Summary of October Meeting

Jeff Buska opened the meeting and briefly identified and discussed the handouts that were provided for the workgroup (copy attached). The handouts address the action items work DPHHS staff conducted as identified in the October meeting. Claudia Clifford also identified and distributed some handouts from AARP regarding national legislative proposals regarding criminal background checks. (copy attached).

Jeff said a draft of the October Meeting minutes was sent out for comment to the workgroup. He intended to provide the workgroup with the opportunity to review and comment before making them public on the website. Once comments are received he will make changes and finalize the minutes, then publish and post on the website. He asked if this was an acceptable process for the workgroup and received feedback that this was acceptable. Jeff reviewed the October meeting to do list regarding the definition of direct care access employee and identified the definition that the group worked on during the last meeting. Staff made some changes based upon the review of definitions in other states as requested and the proposed definition is in the handout. The handout also includes definitions for other key words and references that are used such as vulnerable person for consistency. He brought a clean copy of services that would be subject to background checks that were discussed at the October meeting and used this list to prepare the list of service settings as identified in the definition for licensed services. Jeff explained the different categories of licensure and references and indicated that the list of services is still very broad that would be subject to this criminal background check requirement. The workgroup agreed that the list is still very broad and discussion ensued regarding the viability of passing legislation for a criminal background check. Jeff made it clear that the goal for the group is to reach consensus where we can, but in the event that consensus is not possible, he suggested that we identify and report those issues in the report to the legislature. This will explain the issues as well as the pros and cons for consideration and discussion at the legislature.

The Workgroup was opened up to discussion of the draft definition of Direct Care Access Employee. The attached handouts were the basis of that discussion.

October definition: *Direct care access employee definition:* an unlicensed person who works in private or licensed residential settings, licensed health care facilities, or day service programs that involve direct contact with a client, patient or resident.

Revised definition for discussion: *Direct care access employee means an unlicensed person who works in an individual's private home, licensed residential settings, licensed health care facilities, or licensed child day care programs that involve direct contact through employment or contract with a vulnerable person. Such term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct care access employee through employment or contract and those duties involve (or may involve) one-on-one contact with a vulnerable person.*

A discussion ensued about private arrangements in facilities whose employees would otherwise be subjected to background checks. There was some concern about setting up a two-tiered employee system in facilities, one for licensed staff and one for non-licensed staff. There was also concern that legislation would be hard to pass if it restricted private arrangements. There was concern that the definition only referred to unlicensed persons,

which eliminated nurses. Talked about direct care, that it is not occasional care but it is ongoing, routine care. The general consensus was that the definition needed to include all staff and eliminate the reference to unlicensed staff.

The workgroup then discussed the need to include child care in this report. The department already has the authority and a process that seems to be working. Several workgroup members questioned why we need to include this program in our discussions. A discussion ensued and reference was made back to the SJ7 legislation that included all programs provided, funded or regulated by the department. Based upon previous discussions regarding the scope of this project and the likelihood of passing legislation a suggestion was made to remove child care from this project. The majority of the discussions and topics of the workgroup are focused around the elderly, disabled, and the mentally ill. In addition, since the child care programs have a process and are not represented in the workgroup it was suggested to exclude them from this process. Discussion ensued and the workgroup reached consensus to remove child care licensing program requirements from this process entirely. The workgroup felt checks and process were in place and working for the DPHHS Child Care Licensing Program. That decision does not mean excluding group homes, or services for the DD.

The workgroup resumed discussion regarding the inclusion of volunteers in the definition. Consensus was not reached. This may be an issue for the legislature to resolve. Some group members stated that many volunteers are performing direct care for vulnerable persons. Other members believe any legislation including volunteers would be too hard to pass. Jeff said that he, Becky and Jill would work in the definition and the workgroup could revisit that in the morning, as it was time for the presentation by the Department of Justice (DOJ) on fingerprinting.

Fingerprint Based Background Check Presentation by Kristy Hartnett of the DOJ. (the Power Point included in the handouts)

DOJ provides a service for \$10 name based checks that reviews information from Montana and 6 other states (AK, UT, WY, NV, OR, ID), Kristy indicated that WA will be added to this list. This grouping is called the WIN states, which stands for "Western Identification Network". The name based information includes arrests, convictions, etc. but not different impositions. With fingerprint checks, there is complete information nationwide. It was made clear that once fingerprints are processed for the background checks, the fingerprints are disposed of. It normally takes 7-10 business days to process a check. Becky pointed out that for Child Care Licensing, 100% of fingerprints taken outside of law enforcement have failed and need to be redone. Kristy said that DOJ will train people on how to take fingerprints free of charge. DOJ plans to start certifying people to take fingerprints. There is a wide range of cost for obtaining fingerprints; the range is from \$5 at DOJ to \$50 in Canada. There is also a wide range of costs in equipment, from \$200 for the ink and a kit, up to \$45,000 for the live scan with digital imaging of fingerprints. A demonstration was done on a live scan fingerprint machine.

Discussion continued about having a clearinghouse for the background check information. The workgroup discussed that it would be either DPHHS or DOJ that would perform this activity. Kristy indicated that DOJ is looking at setting up a clearinghouse in response to the legislation related to the Adam Walsh Act. There was some suggestion that funding be attached to DPHHS for the administrative activities and be included in the executive budget, so a fiscal note would not be necessary for this legislation. Jeff indicated that it is an option to be considered and that the workgroup will have an opportunity to discuss administrative processes and funding. Discussion regarding the suggestion ensued and all generally agreed this would be a good idea.

Becky brought in a couple of printouts from the record checks conducted by the Child Care Licensing program with identifiers redacted so work group could see what they look like.

Jeff opened the discussion for Public Comment. There was none.

Jeff said that he will have additional information for the work group tomorrow. The work group will meet again at 8:15 on Wednesday, December 5, 2007. The meeting was adjourned.

December 5, 2007

Review Staff Research from Questions Raised at last meeting.

The workgroup resumed discussion on definitions. Jeff and Jill presented a revised definition on the white board that was based upon the discussions of the previous day. The workgroup worked on refining these definitions and identified questions related to other states experiences that they would like additional information. The questions include: Is there any data on whether licensed or unlicensed people are more often perpetrators to vulnerable persons? How do other states treat licensed and unlicensed persons? If licensed people are not included, is that because they get background checks elsewhere? The workgroup would like to hear from licensing boards on some of these issues. Jeff indicated he would include an action item to follow up on this and see if there is any information that can be obtained from the other state information or from the state licensing boards.

Discussion resumed on the definition and changes that the workgroup made on the white board definition. Jeff suggested that the workgroup take a break and the definition would be put on a computer and put on a projector and modified from there. The group agreed took a break during which time the definitions were put on the projector. After the break the workgroup refined the definitions until a consensus was reached.

The definitions on which the work group has consensus today are:

Direct care access employee means a person, 18 years of age and older, who has employment or contractual relationship with a service setting that is funded or regulated by the Department and involves direct contact with a vulnerable person. Such term does not include an individual that is employed or providing services through a private arrangement with a vulnerable person or their designated representative.

Vulnerable person means a person who receives services as defined in this act and who needs to be protected from abuse, neglect or exploitation.

Direct contact means physical access to persons receiving services or that person's personal property.

Service setting for the purposes of this act means those programs or services that the legislature has determined to represent the greatest risk to the health, safety, and welfare of vulnerable persons served by the department. Such definition include, as these services are defined in statute and Administrative Rule:

- Youth Care Facilities
- Community home for persons with severe disabilities - Group Homes for Developmentally Disabled or Physically Disabled
- Adult Day Care
- Adult Foster Care
- Assisted Living Facilities
- Critical Access Hospitals
- Home Health agency
- Hospice
- Hospitals (Including inpatient psychiatric services) Montana State Hospital
- Inpatient Chemical Dependency Centers
- Intermediate Care Facility for the Developmentally Disabled
- Mental Health Centers
- Nursing Facility (Nursing Homes) (LTC) (Veteran's Homes) (Montana Developmental Center) (Montana Mental Health Nursing Care Center) (Transitional Care Unit)
- Residential Treatment Center (RTC)

- HCBS
- Personal Care Services

Work may still be needed on these definitions. The workgroup may need to continue working on a private arrangement definition.

There was still debate on the volunteer issue. Jeff said that we may not get a consensus on this, and if that is the case, that will be explained in the report. There was consensus that many unlicensed staff, nurses and administrators should have background checks done. Jeff requested emails or letters from the workgroup members regarding their opinions and comments on volunteers. All agreed that this would be useful for those that wanted to comment.

Disqualifying events

Jeff and Becky gave a brief explanation of the worksheet and handouts addressing the disqualifying events. The workgroup began reviewing and discussing definitions of certain offenses with help from DOJ legal counsel Ali Bovington. Instead of defining aged out offenses, it was suggested the workgroup look at offenses that can be appealed. The discussion suggested that process might be more palatable to the legislature. The work group did not complete the review of the worksheet as it was time for public comment. The workgroup agreed to continue the review of the disqualifying events at the next meeting. The worksheet used in the discussion is attached.

Public Comment

Abby Hulme, SLTC, expressed a concern about the self-directed care piece of the definition. Self directed care has some unique place in our state. Consumers are making choices, knowing up front that their caregiver may have a felony record. There is a co-employer relationship. Ms. Hulme is also concerned about HCBS in the Administrative Rules and a general reference to the program in the definition. The process for changing the ARM is extensive. The work group is proposing a comprehensive list of all HCBS services and some of those services were identified in the October meeting as excluded from this process.

Jeff reviewed the timeline set up by the workgroup; he is hoping there will be two more meetings. He discussed the date of the next meeting, somewhere around the end of January, beginning of February. It was suggested there be longer meetings instead of more meetings.

Action Items:

1. Send email to workgroup with optional dates for January meeting. Meeting date will be based upon best availability of members.
2. Department staff to visit with Senior and Long Term Care (SLTC) staff regarding HCBS Services and self directed personal care in relation to general inclusion in the definitions.
3. Workgroup members were requested to send Jeff letters or emails regarding suggestions and/or opinions on how to address the volunteer issue.
4. State staff to follow up with research and analysis on previously selected ten other states and identify options from previous meetings regarding:
 - i. Appeals Process
 - ii. Exclusions of other kinds of practitioners
 - iii. Distinctions between licensed and unlicensed staff
 - iv. Issues/problems of getting legislation passed in their state.

II. Adjourned.

Patient Safety and Abuse Prevention Act of 2007

The Patient Safety and Abuse Prevention Act of 2007 would expand nationwide the currently operating pilot program for national and state background checks on direct patient access employees of certain long-term care (LTC) providers for fiscal years 2008 through 2010, and provide federal matching funds to states to conduct these expansions. States and territories that choose to participate in the nationwide expansion would be required to guarantee a designated amount of non-federal contributions. The federal government would provide a match equal to three times the amount a state guarantees up to a certain amount per state.

As of January 1, 2011, the bill would require these LTC providers to screen direct patient access workers as a condition of employment in order to receive Medicare and/or Medicaid payment. States would be required to have procedures in place to conduct searches of state and federal databases and other sources on behalf of providers. The Secretary of the Department of Health and Human Services (DHHS) would be required to reimburse providers for the costs of conducting national criminal history background checks under Medicaid and Medicare. For Medicaid, beginning on January 1, 2011, the Secretary would be required to make quarterly payments to state Medicaid programs for 90% of the costs of conducting national criminal history background checks. For Medicare, beginning on January 1, 2011, the Secretary would be required to transfer funds as are necessary for that year and each year thereafter.

Section-By-Section Summary

Section 1. Short Title.

The Act is cited as the Patient Safety and Abuse Prevention Act of 2007.

Section 2. Findings and Purposes.

This section includes findings and a statement of the bill's purposes.

Section 3. Nationwide Expansion of Pilot Program for National and State Background Checks on Direct Patient Access Employees of Long-Term Care Facilities or Providers.

The bill would amend the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA, P.L. 108-173) to require the Secretary to expand nationwide, from up to 10 states, the current pilot program for national and state background checks on direct patient access employees of LTC providers for fiscal years 2008 through 2010.

Under the nationwide expansion program, the Secretary would enter into agreements with states and territories that agree to require certain LTC providers to obtain state and national criminal history background checks on their prospective employees or contractors who would have access to patients or residents on a statewide

basis. To conduct these checks, states would agree to search state and federal criminal history records. LTC providers would be defined as nursing homes, home health agencies, hospices, LTC hospitals, providers of personal care services, residential care providers that arrange for, or directly provide, LTC services, and intermediate care facilities for the mentally retarded (ICF/MRs) that receive payment from Medicare and/or Medicaid. States could require other LTC providers to also conduct background checks; however, providers paid through self-directed arrangements, or arrangements in which patients employ the provider of services directly, would be excluded.

States that enter into an agreement with the Secretary would agree to: (1) monitor compliance; (2) establish procedures for workers to appeal or dispute the findings of the background checks; (3) agree to review the results of state or national criminal background checks to determine whether the employee was convicted of a relevant crime; (4) report the results of the review to the provider; and (5) report any employees with relevant convictions to the Healthcare Integrity and Protection Data Bank (HIPDB) managed by DHHS.

Procedures established in a participating state would be designed to: (1) give notice to prospective employees about the background check requirement; (2) require the employee to produce a written statement disclosing any conviction for a relevant crime or finding of patient or resident abuse; (3) require the employee to authorize a criminal background check in writing; (4) require the employee to provide the facility with a rolled set of finger prints or submit to being fingerprinted; (5) require the employee to provide any other identification information specified by the state; (6) require the provider to conduct checks of available registries that would be likely to contain disqualifying information about convictions for relevant crimes or findings of abuse; and (7) permit the provider to obtain criminal histories on prospective employees using a 10-fingerprint check from state criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (IAFIS).

A LTC provider could not knowingly employ any direct patient access employee who has any disqualifying information. However, participating states may permit providers to provisionally employ workers pending completion of the national and state criminal history background checks subject to supervisory requirements established by the state. These supervisory requirements would take into account the cost or other burdens associated with small rural providers as well as the nature of care delivered by home health or hospice providers. Disqualifying information for employment would include a conviction for a relevant crime or a finding of patient abuse, including any substantiated finding by a state or federal agency that an individual has committed an act of patient or resident abuse, neglect, misappropriation of patient or resident property, or other acts as specified by states.

The information obtained from the background check could only be used for the purpose of determining the suitability of the applicant for employment. States are required to ensure that providers would be protected from liability for denying employment based on reasonable reliance on information from the background checks.

States may choose to impose penalties to enforce the requirements of the program conducted in that state.

States and territories that choose to participate in the expansion would be required to guarantee a designated amount of non-federal contributions. The federal government would provide a match equal to three times the amount a state guarantees up to a certain amount per state. States and territories not already participating in the pilot program would be eligible to receive up to \$3 million in matching federal funds to carry out this program. States that are currently participating in the pilot (Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin) would be eligible to receive up to \$1.5 million in federal funds to expand their existing programs statewide if they have not already done so. The Secretary of the Treasury would be required to transfer to DHHS an amount necessary (not to exceed \$156 million) to carry out the nationwide expansion program for FYs 2008 through 2010.

This section would also require the DHHS Inspector General to submit an annual evaluation of the nationwide expansion program for 2008 and 2009 to the Secretary, together with recommendations for implementation of the new requirements, no later than 6 months after completion of the second program year.

Section 4. Background Checks on Direct Patient Access Employees of Long-Term Care Facilities and Providers.

The bill would amend Medicare and Medicaid law to require, starting January 1, 2011, specified LTC providers that receive Medicaid and/or Medicare funding to conduct background checks before hiring a direct patient access employee. Under the bill, these providers would include skilled nursing facilities; nursing facilities; home health agencies; hospice care providers; LTC hospitals; personal care service providers; adult day care providers; intermediate care facilities for the mentally retarded (ICF/MR); and residential care providers that arrange for, or directly provide, LTC services, including an assisted living facility that provides a level-of-care established by the Secretary. Direct access employees would include any employee, contractor or volunteer who has access to a patient or resident and who has duties that involve (or may involve) one-on-one contact, as determined by the state.

States would be required to establish procedures for providers to conduct screenings, that would include a search of state-based abuse and neglect registries and databases (including the registries of other states in which prospective employees resided); criminal records; and records of any proceedings conducted that might contain disqualifying information, such as proceedings conducted by state professional licensing and disciplinary boards and state Medicaid fraud control units. As part of these screenings, providers would be required to request that states oversee the coordination of a state and national criminal history background check that utilizes a search of state and federal criminal history records and includes fingerprint check using the FBI's IAFIS. In the development of these procedures, states could choose to use those procedures already established for purposes of the pilot or nationwide expansion programs.

States could choose to allow providers to provisionally hire an applicant for up to 30 days pending completion of the screening and background checks or if an applicant has appealed the results of the screening and background checks. Providers would be required to maintain direct on-site supervision of the provisional employees.

Providers would be prohibited from knowingly hiring any direct patient access employee with disqualifying information that pertains to a conviction for a relevant crime [i.e., any federal or state criminal convictions for any offense described in section 1128(a) of the Social Security Act and other offenses, including violent crimes, as specified by the state] or a finding of substantiated patient or resident abuse.

State procedures would be designed to: (1) provide notice to the prospective direct patient access employee about the screening and background check requirements, including a fingerprint check; (2) require employees to provide written statements disclosing any disqualifying information, a signed statement authorizing the facility to conduct the required background check, a rolled set of fingerprints or submit to the being fingerprinted, and any other identification information that the state would require; (3) require the provider to check any available registries that would likely contain disqualifying information; (4) provide a prospective direct patient access employee with the opportunity to request a copy of the results of the background check conducted and an opportunity to correct any errors; (5) provide the direct patient access employee with a certificate that would be valid for 2 years indicating that such fingerprint check has been completed and no disqualifying information was found.

Providers would be required to use the information about a direct patient access employee pursuant to a screening or criminal background check only for the purpose of determining suitability for employment. Providers would be protected from liability for denying employment based on reasonable reliance on information from the background checks. In addition, providers would be prohibited from charging prospective direct patient access employees fees for the screening or criminal history background checks.

States may choose to impose penalties on providers that violate these requirements. Providers would be required to report penalties to the Secretary on a quarterly basis. If the Secretary determines that a state is not sufficiently enforcing these requirements, the Secretary could exclude providers from participation in Medicaid and/or Medicare. Furthermore, providers that knowingly employ direct patient access employees with disqualifying information, would be subject to civil penalties of no greater than \$5,000 for the first violation, and \$10,000 for the second and subsequent violations within any 5-year period.

The section also includes a number of provisions that states would follow to carry out the requirements of this section, including providing for an independent process by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check. States would also designate a single state agency as responsible for: (1) overseeing the coordination of any state and national

criminal history background checks requested by a nursing facility; (2) reviewing, using appropriate privacy and security safeguards, the results of any state or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction of a relevant crime; (3) immediately reporting to the requesting nursing facility on the background checks' results; and (4) reporting a conviction to the database established for this purpose.

The Secretary would be required to reimburse providers for the costs of conducting national criminal history background checks under Medicaid and Medicare. For Medicaid, beginning on January 1, 2011, the Secretary would be required to make quarterly payments to state Medicaid programs for 90% of the costs of conducting national criminal history background checks. For Medicare, the Secretary would be required to transfer funds as are necessary for fiscal years 2011 and each fiscal year thereafter. The Secretary would determine the proportion of payments that would result in an equitable allocation between the two programs, ensuring that duplicative payments are not made. The Secretary would be required to develop model forms that providers would use to submit reimbursement claims. Regulations would be promulgated by the Secretary to carry out these payment procedures.

Section 5. Background Checks Provided by the Federal Bureau of Investigation

The FBI Director would be required to ensure that IAFIS would have the capacity to store and retrieve fingerprints on direct access workers from its databases by January 1, 2011. If a direct patient access employee is convicted of a crime after the initial national background check and the employee's fingerprint matches the prints on file, the FBI would be required to inform the state law enforcement department so that the state could inform the facility. The FBI Director, in consultation with the Secretary of DHHS, could charge a "reasonable fee" for the actual costs of conducting national criminal history background checks using the IAFIS.

EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

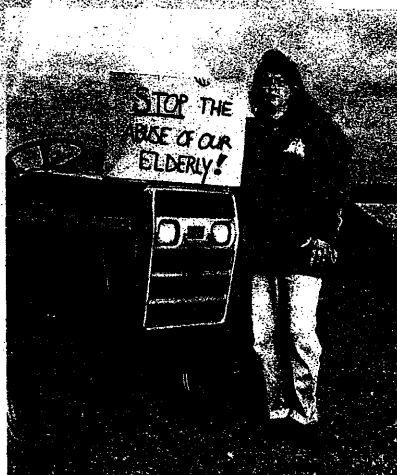


Sec. 1128. [42 U.S.C. 1320a-7] (a) Mandatory Exclusion.—The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1128B(f)):

- (1) Conviction of program-related crimes.—Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.
- (2) Conviction relating to patient abuse.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.
- (3) Felony conviction relating to health care fraud.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996^[43], under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.
- (4) Felony conviction relating to controlled substance.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

Abusers Slip Through the Cracks

Jennifer Coldren's 90-year-old grandmother, who suffers from dementia, was assaulted and raped by an employee at her residential care facility in 2006. The 43-year-old attacker had a criminal record and previous allegations of inappropriate sexual conduct. ■ "It was his third day on the floor," says Coldren (right). The attacker is now serving up to 30 years in prison. ■ While the Rome, N.Y., facility where Coldren's grandmother lived does conduct criminal background checks—as required by state law—employees are allowed to work while waiting for the results. Federal law doesn't require long-term care facilities to conduct national criminal background checks. And when facilities do perform them—either voluntarily or because of state law—the results can take up to four months, which can put residents at risk. ■ The U.S. Senate is considering a bill, the Patient Safety and Abuse Prevention Act of 2007, that would create a national background check system for long-term care workers. Based on a pilot program launched in seven states, this system could speed up background checks; it would also prohibit an abuser from working in another state where interstate background checks aren't done. ■ "We need to keep predators out of our system, not just prosecute them after they've ruined people's lives," says Sen. Herb Kohl, D-Wis., the bill's sponsor. ■ Coldren agrees, adding, "If this bill was already in place, this would not have happened to my grandmother." —Elizabeth N. Brown



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AARP Bulletin

SJ7 Workgroup
Direct Care Access Employee Definition

Notes from October meeting - The group worked on a draft of a working definition of a direct care access employee:

Direct care access employee definition: an unlicensed person who works in private or licensed residential settings, licensed health care facilities, or day service programs that involve direct contact with a client, patient or resident.

Department staff was assigned the task to work on this definition by comparing other states definitions and prepare proposal for review and discussion at the next meeting.

Proposed Definition: Direct care access employee means an unlicensed person who works in an individual's private home, licensed residential settings, licensed health care facilities, or licensed child day care service programs that involve direct contact through employment or contract with a vulnerable person. ~~client, patient or resident.~~ Such term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct care access employee through employment or contract and those duties involve (or may involve) one-on-one contact with a vulnerable person.

Direct contact means physical access to persons receiving services or that person's personal property. This includes providing face to face care for medical, training, supervision, counseling, consultation, or non-technical services to persons served by the program.

Licensed residential settings means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, that is used, operated, or designed to provide a system of substitute care to provide facilities and services for youth placed out of their homes as defined in Title 52-2-602 MCA and 52-4-202 MCA.

Licensed health care facilities means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual as defined in Title 50-5-101 MCA.

Licensed child day care programs means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide child care as defined in Title 52-2-703 MCA.

Non-technical services means services that are performed in or on the premises of an individual's private home or a licensed facility and that are predominately physical or manual in nature and involve or may involve patient contact including but not limited to housekeeping, janitorial or maintenance services, food preparation and administrative services.

Unlicensed person means an individual who is not licensed by the state of Montana under Title 37 MCA to engage in the practice of nursing home administration, medicine, dentistry, osteopathy, podiatry, optometry, or nursing.

Vulnerable person means a person who lacks the functional, mental, or physical ability which affects the person's judgment or behavior, to the extent that they lack sufficient understanding or capacity to make or communicate or implement decisions regarding care and are unable to protect themselves from abuse, neglect or exploitation.

Other State Definitions

AK - Any employee that is licensed or certified by the department. Any employee, volunteer, or independent contractor that works for an entity that is eligible to receive payments from the department to provide for the health, safety and welfare of persons served by programs administered by the department.

Setting: ASC, ALF, child care facilities, child placement agencies, foster homes, free standing birth centers, HHA, hospices, hospitals, ICF/MR, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, RHC, runaway shelters.

AZ - Employees, owners and contracted persons who provide direct care, home health services, or supportive services. A health professional who has complied with the fingerprinting requirements is not required. Volunteers and persons under 18 or who are at least 99 are exempt as long as they are under the direct visual supervision of a previously screened person. Setting: Residential Care institution, a nursing care institution, or a HHA.

ID - Direct Patient Access Individual - An individual who has direct access to a patient or a resident in a long term care setting through employment or contract. Volunteers and individuals who are providing services in a long term care setting through a private arrangement are not required to have a background check. There is a long list of department employees subject to checks.

Setting: Long term care settings include HHA, Hospices, Hospitals with Swing Beds, ICF/Mrs, Nursing facilities and residential care or ALFs, LTC facilities.

Also included are: adoptive parent applications, alcohol or drug abuse prevention and treatment programs serving children, certified family homes, children's residential care facilities, children's therapeutic outdoor programs, commercial non-emergency transportation providers, EMS, home and community based services, licensed foster care, mental health clinics, personal assistance agencies, personal care service providers, psychosocial rehabilitation providers, semi-independent group residential care facilities for the developmentally disabled or mentally ill, service coordinators and paraprofessional providers, skilled nursing and intermediate care facilities, support brokers and community support workers.

There is also a list of department employees required to have background checks.

KS - The statute refers to "anyone who works" in an adult care home. Is not interpreted to mean an incidental or emergency repair person or episodic contract labor. KBIT background checks can NOT be performed on licensed health care professions.

Setting: Adult care home or HHA. Includes LTC, ALF, HPC, ADC and staffing agencies.

MN - "Access to persons served by a program" means physical access to persons receiving services or that person's personal property without continuous, direct supervision (means a person is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program. Direct contact means providing face to face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program. Volunteers and student volunteers are included. An individual who, without providing direct care contract services at a licensed program, may have unsupervised access to children or vulnerable adults. All managerial officials.

Setting: LTC, ALF, HHA, hospitals, HPC, personal care providers, supplemental nursing agencies and other licensed programs.

NV - Every employee or independent contractor, including the administrator and the person licensed to operate the agency or facility, regardless of whether the individual provides direct patient care. The statute does not apply to volunteers.

Setting: Certain long term care facilities or agencies. Agencies that: provide personal care services in the home, provide nursing in the home, facility for intermediate care, facility for skilled nursing, residential facility for groups.

NM - "**Applicant**" means a person who applies, and is offered employment or contractual service with a care provider to provide services as a caregiver or hospital caregiver whether as an employee or contractor. "**care**" means the therapy, services, treatment, support, supervision, assistance with the activities of daily living or management of a care recipient. "**caregiver**" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that provider. "caregiver" includes:

compensated persons such as employees, contractors and employees of contractors, guardianship service providers and case management entities that provide services to people with developmental disabilities; and administrators or operators of facilities who are routinely on site. "caregiver" does not include: persons who provide natural supports; independent health care professionals, licensed or medicaid certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee, and who are involved in the treatment or management of the medical care of a care recipient such as attending or treating physicians or other health care professionals providing consultation or ancillary services; or a person who has undergone a nationwide or statewide criminal history screening under Sections 32A-15-1 to 32A-15-4, NMSA 1978, of the Children's and Juvenile Facility Criminal Records Screening Act.

"care provider" includes: state owned or operated health care facilities, intermediate care facilities for the mentally retarded, general acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, hospice services, guardianship providers, adult residential care facilities, adult community residential facilities, adult limited diagnostic treatment centers, case management entities providing services to persons with developmental disabilities, adult boarding homes, adult day care centers, adult family care homes, adult halfway homes, care providers operating respite, companion or personal care programs funded by the New Mexico aging and long term services department, care providers funded through the New Mexico children youth and families department providing homemaker and adult care services, disabled and elderly residential care providers providing services paid for in whole or in part by state funds, home health agencies, all residential habilitation service or respite service care providers authorized to be reimbursed in whole or in part by state funds or under any medicaid or medicaid waiver program, nursing home facilities, any other care provider entity which is licensed or medicaid certified and which is not specifically identified herein; **"care provider"** does not include: outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings, and any care facility located at or performing services exclusively for any correctional facility.

Setting: Skilled nursing; care for mentally retarded; psychiatric care; rehabilitation; HHA; homemaker agency; home for the aged or disabled; group home; adult foster care home; guardian service provider; case management entity that provides services to people with DD; private residence that provides personal care; adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; adult daycare center; boarding home; adult residential care home; residential service or rehabilitation service authorized to be reimbursed by Medicaid; any licensed or Medicaid-certified entity or any program funded by the State Agency on Aging that provides respite companion or personal care services; or programs funded by the Adult Services Division of the Children, Youth and Families Department that provide homemaker or adult daycare services.

OK - (A list of Health Dept employees). Nurse aide means any person who provides, for compensation, nursing care or health related services to residents in a nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center, or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program.

Nontechnical service worker means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. Nontechnical services means services that are performed in or on the premises of a nursing facility and that are predominately physical or manual in nature and involve or may involve patient contract including but not limited to housekeeping, janitorial or maintenance services, food preparation and administrative services.

Setting: A nursing facility or specialized facility, a residential care home, an adult day care center, an assisted living center, a continuum of care facility, a home health or home care agency.

OR - Subject individual includes people who work, volunteer, and in some cases live in a location where services are provided to children, seniors, and people with disabilities or mental illness. A person who is licensed, certified, registered, or otherwise regulated by the department and who provides care. A homemaker worker, personal care services provider. A person providing training to staff within a long term care facility. Does not include individuals under 16. A person receiving training as part of a required curriculum through any college, university, or other training program. A subject individual may work, volunteer, reside or be trained until the check is completed under active supervision.

Setting: LTC, ALF, HHA, respite, mental health, DD.

WA - Any current employee who will or may have unsupervised access to children, vulnerable adults (means a person who lacks the functional, mental, or physical ability to care for oneself), or individuals with mental illness or developmental disabilities. Providers of home health services.

Setting: LTC, boarding homes, and home and community based services.

SJ7 Workgroup

Settings for Direct Care Access Employee Definition

As referenced by the definition: "...licensed residential settings, licensed health care facilities, or licensed day service programs..."

Licensed residential settings means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, that is used, operated, or designed to provide a system of substitute care to provide facilities and services for youth placed out of their homes as defined in Title 52-2-602 MCA and 52-4-202 MCA.

52-2-602

- Youth Care Facilities
 - Youth foster home – (Background check required 52-2-622 (4))
 - Kinship foster homes
 - Youth group homes – including Therapeutic Youth Group Homes
 - Youth shelter care facilities
 - Child-care agencies
 - Transitional living programs
 - Youth assessment centers

52-4-202

- Community home for persons with severe disabilities - Group Homes for Developmentally Disabled or Physically Disabled

Note: DSD has a requirement under ARM 37.34.2102 where a contractor must conduct a background check of all persons prior to employment. This ARM is supported by Title 53-20-205(2) MCA where the legislature provided the authority: "The department shall set minimum standards for programs and establish appropriate qualifications for persons employed in the programs." Based upon this administrative rule the Disability Services Division established a policy effective 8/06 that outlines background check policy requirements.

Licensed health care facilities means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual as defined in Title 50-5-101 MCA.

- Adult Day Care
- Adult Foster Care
- Assisted Living Facilities
- Critical Access Hospitals
- End-Stage Renal Dialysis Facilities
- Home Health agency
- Home Infusion Therapy Services
- Hospice
- Hospitals (Including inpatient psychiatric services) Montana State Hospital
- Inpatient Chemical Dependency Centers
- Intermediate Care Facility for the Developmentally Disabled

- Medical Assistance Facility
- Mental Health Centers
- Nursing Facility (Nursing Homes) (LTC) (Veteran's Homes) (Montana Developmental Center) (Montana Mental Health Nursing Care Center) (Transitional Care Unit)
- Outdoor Behavioral Programs
- Outpatient Centers for Primary Care - Birthing Centers
- Outpatient Centers for Surgical Services
- Residential Treatment Center (RTC)
- Specialty Mental Health Facilities

Licensed day service programs means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide child care as defined in Title 52-2-703 MCA.

- Family day-care home
- Group day-care home
- Day-care center
- Sick child day care or drop-in care.

Day Care Licensure -- Criminal background checks are already required under 52-2-723 (1)(a) & 52-2-731 (1). Administrative Rules of Montana (ARM) 37.95.161.

Settings for Direct Care Access Employee Definition

As referenced by the definition: ... *an unlicensed person who works in an individual's private home, ...*"

- Home and Community Based Services – (Medicaid Waiver) including services identified at the October SJ7 meeting from the SLTC HCBS Waiver Services List:
 - Adult Day Care
 - Adult Residential – Assisted Living, Residential Hospice & TBI
 - Behavioral Programming
 - Case Management
 - Cognitive Rehabilitation
 - Community Residential Rehabilitation
 - Comprehensive Day Treatment
 - Consumer/Family Intensive Support Service
 - Day Habilitation
 - Family Training & Counseling for Child Development
 - Habilitation Aide
 - Homemaker
 - Homemaker Chores
 - Nutrition (Meals)
 - PAS Attendant and PAS Nurse Supervision
 - Prevocational Services
 - Private Duty Nursing (PDN), PDN-LPN & PDN-RN
 - Psychosocial Consultation

- Registered Nurse Supervision
- Residential Habilitation
- Respite Care (Including Assisted Living, Hospital, Nursing Facility)
- SDPAS (Attendant & Oversight)
- Special Child Care for Children
- Specially Trained Attendants
- Supported Employment
- Supported Living
- Meals on Wheels Programs
- Personal Care Attendants
- Public Health Home Visiting

Settings for Direct Care Access Employee Definition
Discussed in October Meeting and not referenced by the definition

- Ambulance
- Child Protective Services (CPS)
- Child and Adult Care Food Programs
- Foster Care Independence Program
- Head Start
- Home Dialysis Attendants
- Montana Vocational Rehabilitation Program - Blind & Low Vision Services
- Montana Vocational Rehabilitation Program - Vocational Rehabilitation Services
- Office on Aging – Including Area Agencies on Aging
- State Health and Insurance Assistance Program (SHIP)
- Targeted Case Management (Mental Health)
- Targeted Case Management (Non-Mental Health)


Side By Side Comparisons - Definition of Direct Care Worker

AK	AZ	ID	KS	MN	NV	NM	OK	OR	WA
Any employee that is licensed or certified by the department. Any employee, volunteer, or independent contractor that works for an entity that is eligible to receive payments from the department to provide for the health, safety and welfare of persons served by programs administered by the department.	Employees, owners and contracted persons who provide direct care, home health services, or supportive services. A health professional who has complied with the fingerprinting requirements is not required. Volunteers and persons under 18 or who are at least 99 are exempt as long as they are under the direct visual supervision of a previously screened person.	Direct Patient Access Individual = An individual who has direct access to a patient or a resident in a long term care setting through employment or contract. Volunteers and individuals who are providing services in a long term care setting through a private arrangement are not required to have a background check. There is a long list of department employees subject to checks.	The statute refers to "anyone who works" in an adult care home. Is not interpreted to mean an incidental or emergency repair person or episodic contract labor. KBIT background checks can NOT be performed on licensed health care professions.	"Access to persons served by a program" means physical access to persons receiving services or that person's personal property without continuous, direct supervision (means a person is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program. Direct contact means providing face to face care, training, supervision, counseling, or consultation, or medication assistance to persons served by the program. Volunteers and student volunteers are included. An individual who, without providing direct care contract services at a licensed program, may have unsupervised access to children or vulnerable adults. All managerial officials.	Every employee or independent contractor, including the administrator and the person licensed to operate the agency or facility, regardless of whether the individual provides direct patient care. The statute does not apply to volunteers.	State has definitions for applicant, care, care give and care provider. A shortened version of caregiver: any person whose employment or contractual service includes direct care or routine and unsupervised physical or financial access to care recipients. Has a long list of those id does not include, including: independent health care professionals, licensed or certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee.	(A list of Health Dept employees). Nurse aide means any person who provides, for compensation, nursing services to residents in a care or health related nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center, or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program. Nontechnical service worker means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. Nontechnical services means services that are performed in or on the premises of a nursing facility and that are predominately physical or manual in nature and involve or may involve patient contact including but not limited to housekeeping, janitorial or maintenance services, food preparation and administrative services.	Subject individual includes people who work, volunteer, and in some cases live in a location where services are provided to children, seniors, and people with disabilities or mental illness. A person who is licensed, certified, registered, or otherwise regulated by the department and who provides care. A homemaker worker, personal care services provider. A person providing training to staff within a long term care facility. Does not include individuals under 16. A person receiving training as part of a required curriculum through any college, university, or other training program. A subject individual may work, volunteer, reside or be trained until the check is completed under active supervision.	Any current employee who will or may have unsupervised access to children, vulnerable adults (means a person who lacks the functional, mental, or physical ability to care for oneself), or individuals with mental illness or developmental disabilities. Providers of home health services.

Side By Side Comparisons - Background check process. Page 1

Check process	AK	AZ	ID	KS	MN	NV	NM	OK	OR	WA
Who does check?	State department does background check, has a central registry.	State division issues FP clearance cards.	State department of Health and Welfare does background check.	KBI does the checks.	MN Department of Health contracts with Department of Human Services for check.	Department of Public Safety	Department does a FP based check.	State Dept of Health Services conduct checks. Records maintained by OK Bureau of Investigations.	The Department or an entity authorized by the department conducts the check.	DSHS (State) conducts background check.
What is checked?	Does name based and FP checks.	Has a FP check with state and FBI.	FP based with state criminal identification bureau, FBI, and some other agencies if warranted.	Name based checks, statewide. Includes juvenile criminal history.	DHS checks with Bureau of Criminal Apprehension and FBI if indicated on BCA record. Name based, sometimes FP.	FP check through the Central Repository for Nevada Records of Criminal History.	Emailed 11-27	State records.	Use state law enforcement data system, FBI primarily.	Will fingerprint for providers who have lived in WA less than three years
What is the cost? Who pays?	Cost is \$84, volunteers are \$59. If checked within last 6 years, the cost is \$25.	Cost is \$52 if paid by facility or employee, \$46 if paid by volunteer. Employer decides who pays.	Cost is \$48 to be paid by applicant (paid through Sept 2007 by CMS grant).	Name based checks are \$10. Health provider pays	Cost is \$20. No applicant shall pay any fees. The fee is paid by employer.	Cost is \$52, paid by the department.	The fee will not exceed 74. The fee can be paid by provider or applicant.	The employer pays a fee of \$15.	Cost is \$52 through State Police. Department pays most of the cost. Seniors program pays \$12.	State pays for background check. Charge is \$54.
Can employee work during check process?	An individual may work once a provisional clearance is issued, which is based on record check and receipt of Authorization to Release form.	Yes	Applicants are not available to work until they have submitted an application and the employer has reviewed it.	A person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment.	The subject may not provide direct contact services unless under continuous direct supervision.	Yes, as long as the employer submits FP within 10 days of hire.	Applicants who have submitted all completed documents and paid all fees may be deemed to have conditional supervised employment.	An employer can hire pending the background check they must be supervised.	An employer can hire pending the background check, they must be supervised.	Yes. Must be supervised until background check is completed. Must be conditionally hired based on results of background checks.
How long does a check last?	Six years, if individual does not have a break in providing services of 100 days or more.	FP Clearance cards are good for 2 years.	Checks are good for 3 years.	Emailed 11-27	Emailed 11-27	If background check has been done within 6 months it is valid. Workers must re-submit prints every 5 years.	A background check does not have to be done if there has been one within one year with no disqualifying conventions.	A background check report can be used by an employer if it has been done within the year.	A check is not required if it has been conducted within 24 months.	Checks are good for 2 years for boarding homes and adult family homes. Although not required for LTC, that is industry practice.

Side By Side Comparisons - Background check process. Page 2

Check process	AK	AZ	ID	KS	MN	NV	NM	OK	OR	WA
Who gets the results of the check?	State receives the results of the check. State notifies the employer whether the individual can be a service provider. Notifies individual of the check and division of details if individual is barred.	AZDPS gets the check results. If there is a denial, they send a letter to the applicant, and to the department of health services, then they notify the employee. Criminal record info is not released.	The applicant and the employer receive automatic email notifications from the department on the check. They can also log onto the web site. If there is a denial, a written notice is sent from the department.	KBI collects the info, sends to the facility a Notice of Employment Prohibition. KBI also sends monthly list to Department of Aging.	DHS notifies applicant, and in some instances, employer if individual is disqualified. Records retained as private data by DHS.	DPS mails to employer an Applicant FP Response indicating whether the individual is or is not disqualified. No details are included. Looking at a web based process.		Facilities are required to get the checks and store them in the employee file. State reviews during survey.	An authorized designee gets the results, they have been trained by the Department to view and analyze info and make a fitness determination.	Results only disclosed to facility who made inquiry, authorized state and federal employees, and state patrol auditor. Employer required to share results with subject of check.
Timeline of the check	Department must receive FP within 30 days of hire date.	Employee has 20 days to get info to AZDPS.	Department must receive FP within 30 days of hire. Usually check is done within 2 days. May take longer if person does have crimes on their record.	Days to months	The Commissioner has 15 days to notify on the results of the background check.	Must get info to Central Repository within 10 days.	Must be submitted within 20 days of first day of employment.	The department has 5 days to process the background check.	The department has 21 days to complete the check.	Facility has 72 hours to get info to DSHS. For boarding homes, it is no later than the first business day of employee starting work.
Other	Entity must have a provider identification number.	There is language stating the division is not liable for damages.		KBI has prepaid forms that can be purchased in multiples of ten. Check exempts persons employed by same facility for 5 consecutive years prior to bill being enacted. Volunteers are exempt	May not disqualify an individual because that individual has or has had a mental illness.	Does not apply to volunteers.		The employer can ask the department to do a background check on those licensed people who are exempt.	The qualified entity has immunity from liability.	Background checks are not required on employees who do not have unsupervised access to residents.

Side By Side Comparisons - Setting Definitions

AK	AZ	ID	KS	MN	NV	NM	OK	OR	WA
<p>Ambulatory Surgical Center (ASC), Assisted Living Facility (ALF), child care facilities, child placement agencies, foster homes, free standing birth centers, Home Health Agency (HHA), hospices, hospitals, Intermediate Care Facility for the Mentally Retarded (ICF/MR), maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, Rural Health Centers (RHC), runaway shelters.</p>	<p>Residential Care institution, a nursing care institution, or a Home Health Agency.</p>	<p>Long term care settings include HHA, Hospices, Hospitals with Swing Beds, ICF/MR, Nursing facilities and residential care or ALFs, LTC facilities.</p> <p>Also: adoptive parent applications, children alcohol/drug abuse prevention & treatment programs, certified family homes, children residential care facilities, children therapeutic outdoor programs, commercial non-emergency transportation providers, EMS, home & community based services, licensed foster care, mental health clinics, personal assistance agencies, personal care service providers, psychosocial rehabilitation providers, semi-independent group residential care facilities for the developmentally disabled or mentally ill, service coordinators and paraprofessional providers, skilled nursing and intermediate care facilities, support brokers and community support workers.</p> <p>There is also a list of department employees required to have background checks.</p>	<p>Adult care home or Home Health Agency (HHA). Includes Long Term Care (LTC), Assisted Living Facility (ALF) and staffing agencies.</p>	<p>Home Health Agency (HHA). Includes Long Term Care (LTC), Assisted Living Facility (ALF) hospitals, HPC, personal care providers, supplemental nursing agencies and other licensed programs.</p>	<p>Certain long term care facilities or agencies. Agencies that provide personal care services in the home, provide nursing in the home, facility for intermediate care, facility for skilled nursing, residential facility for groups.</p>	<p>Skilled nursing; care for mentally retarded; psychiatric care; rehabilitation; HHA; homemaker agency; home for the aged or disabled; group home; adult foster care home; guardian service provider; case management entity that provides services to people with DD; private residence that provides personal care; adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; adult daycare center; boarding home; adult residential care home; residential service or rehabilitation service authorized to be reimbursed by Medicaid; any licensed or Medicaid-certified entity or any program funded by the State Agency on Aging that provides respite companion or personal care services; or programs funded by the Adult Services Division of the Children, Youth and Families Department that provide homemaker or adult daycare services.</p>	<p>A nursing facility or specialized facility, a residential care home, an adult day care center, an assisted living center, a continuum of care facility, a home health or home care agency.</p>	<p>LTC, ALF, HHA, respite, mental health, DD.</p>	<p>LTC, boarding homes, and home and community based services.</p>

Side By Side Comparisons - Appeals Process

AK	AZ	ID	KS	MN	NV	NM	OK	OR	WA
<p>The appeal process in Alaska has two parts. If the individual believes that a barring condition is based on erroneous information the individuals would have 30 days to file the appeal. If the individual wishes to be allowed to be a service provider that has a valid barring condition the individual would request a variance.</p>	<p>Persons denied by AZDPS because of a conviction for an offense found in subsection C. of ARS 41-1758.03 may request a "Good Cause Exception" from the AZ Board of Fingerprinting. This board is a separate entity from AZDPS.</p>	<p>An applicant will have 15 days to appeal to correct the FBI denial if they believe it is incorrect.</p> <p>An applicant has 30 days to challenge an unconditional denial. Must submit challenge in writing, and provide information to show the denial is incorrect.</p> <p>An applicant has 14 days to request an exemption review for only conditional denials.</p> <p>Two levels of denials based on disqualifying crime, unconditional and conditional, mostly affects the appeals process.</p>	<p>No. Prohibitions can be removed by order of expungement or does showing 5 years since fulfilling sentence requirements.</p>	<p>An individual may work if they request reconsideration within the prescribed time. Must submit request within 30 days.</p>	<p>Only the individual may challenge the disqualification.</p>	<p>Applicant must submit a written request for reconsideration within 14 days with additional documentation for consideration.</p>	<p>No appeals.</p>	<p>Applicant has 45 days to appeal. Applicant may have witnesses and attorney. Applicants can appeal information they believe to be incorrect.</p> <p>The subject individual cannot hold the position, provide services or be employed, licensed, certified or registered during the appeal. The department must get the hearing request within 10 days, they then have 30 days to process.</p>	<p>Enacted in 27</p>

APPLICANT FINGERPRINT PROCESS

MONTANA DEPARTMENT OF
JUSTICE

AUTHORITY

- Montana Law (MCA 44-5-301)
 - There are no restrictions on the dissemination of public criminal justice information by the state.
- NCPA-VCA (National Child Protection Act-Volunteers for Children Act)
 - Federal law that allows background checks for people having contact with children, the elderly and disabled.

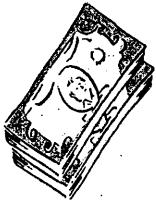


PRIVACY RESPONSIBILITY



- CITIZEN RIGHTS
 - Privacy: Record is not to be shared with friends or co-workers
- RECORD CHALLENGE
 - Notify prospective employee of record
 - Individuals right to challenge

ASSOCIATED COSTS



- NAME BASED
 - \$ 10 Montana only
- FINGERPRINT BASED
 - \$ 10 Montana
 - Montana and National (FBI)
 - \$29.25 Employee
 - \$25.25 Volunteer
- Fingerprint equipment
 - \$60 to \$55,000+

TYPES OF CHECKS AVAILABLE

- NAME BASED
 - Limited by accuracy of name, DOB and SOC information
- FINGERPRINT BASED
 - Positive Identification by fingerprints



EXPECTED RESULTS

- NO RECORD
 - No criminal record on file at Montana or FBI
 - Information on file is not public
 - Subject on file, not identified with given information
- RECORD
 - Name
 - Criminal charges on file
 - Location charges originated
 - Dispositions indicating
 - Fine & Time

WHAT IS CRIMINAL HISTORY INFORMATION

Individuals criminal activity record consisting of:

- Arrest information; detentions
- Filing of complaints, indictments
- Resulting information and dispositions
- Includes identification information such as:
 - fingerprint records
- Sex and Violent Offender Registration (SVOR)
 - <http://svor.doj.state.mt.us/>

WHAT IS TYPICALLY NOT INCLUDED IN A CRIMINAL HISTORY RECORD

- Wants/Warrants
- Protection Orders
- Driving/Traffic Offenses, unless felony
- Violations of Local Ordinances
- Arrests where the individual was not fingerprinted
- Official Registries of Substantiated Abuse & Neglect

FILLING OUT THE FINGERPRINT CARD

- Verify identity (by photo identification) of person fingerprinted
- Complete data blanks on card
 - Typed or clearly handwritten
 - Black ink
- Document signed by person fingerprinted and the person taking the prints

RECORDING QUALITY FINGERPRINTS



- Proper equipment
- Quality training
- Clear and fully rolled prints – comes with lots of practice!
- Review results

THANK YOU
HAVE A GREAT DAY



Disqualifying Events for Idaho, Kansas, Minnesota, New Mexico, Oklahoma, Oregon, Nevada and Washington

* Alaska and Arizona are provided separately

STATE OF IDAHO

LIST OF DISQUALIFYING EVENTS

Unconditional Disqualifiers	5-year disqualification
Abuse, neglect or exploitation of a vulnerable adult	Aggravated assault
Aggravated 1 st , 2 nd degree arson	Aggravated battery
Crimes against nature*	Arson in the 3 rd degree
Forcible sexual penetration by use of a foreign object	Burglary
Incest	A felony involving a controlled substance
Felony or Misdemeanor injury to a child	Felony Theft
Kidnapping	Forgery of an fraudulent use of a financial transaction card
Lewd conduct with a minor	Forgery and counterfeiting
Mayhem*	Grand Theft
Murder in any degree	Insurance fraud
Voluntary manslaughter	Public Assistance fraud
Felony assault (w/intent)	
Felony battery (w/intent)	
Poisoning	
Possession of sexually exploitative material	
Rape	
Robbery	
Felony stalking	
Sale or barter of a child	
Sexual abuse or exploitation of a child	
Video Voyeurism	
Enticing of children	
Inducing individuals under 18 yoa into prostitution or patronizing a prostitute	

Other considerations which could warrant disqualification:

*Any felony punishable by death or life imprisonment.

*Attempt, conspiracy or accessory after the fact to commit any of the disqualifying designated crime

STATE OF KANSAS

LIST OF DISQUALIFYING EVENTS

Permanent Disqualifiers	5-year disqualification	Length subject to underlying offense
Murder in the 1 st	Involuntary Manslaughter	Attempt to commit a prohibited offense
Murder in the 2 nd	Aggravated vehicular homicide	Conspiracy to commit a prohibited offense
Voluntary Manslaughter	Criminal abortion	Criminal solicitation to commit a prohibited offense
Assisting Suicide	Aggravated Assault	
Mistreatment of a dependent adult <i>*Misd or Felony</i>	Aggravated Assault on a law enforcement officer	
Capital Murder	Felony Battery	
Rape	Felony Battery against a law enforcement officer	
Indecent Liberties with a child	Aggravated Battery	
Aggravated Indecent Liberties with a child	Aggravated Battery against a law enforcement officer	
Aggravated criminal sodomy	Attempting poisoning	
Indecent solicitation of a child	Criminal threat	
Aggravated Indecent solicitation of a child	Kidnapping	
Sexual exploitation of a child	Aggravated kidnapping	
Sexual battery	Felony interference with parental custody	
Aggravated sexual battery	Aggravated interference with parental custody	
	Robbery	
	Aggravated Robbery	
	Blackmail	
	Criminal injury to persons	
	Aircraft piracy	
	Exposing another to a life threatening communicable disease	
	Stalking	
	Felony injury to a pregnant woman	
	Felony injury to a pregnant woman by a vehicle	
	Involuntary manslaughter while driving under the influence	
	Felony Criminal sodomy	
	Enticement of a child	
	Felony Lewd and lascivious behavior	

Permanent Disqualifiers	5-year disqualification	Length subject to underlying offense
	Felony promoting prostitution	
	Habitually promoting prostitution	
	Promoting sexual performance by a minor	
	Unlawful sexual relation	
	Unlawful voluntary sexual relation	
	Bigamy	
	Incest	
	Aggravated Incest	
	Abandonment of a child	
	Aggravated abandonment of a child	
	Criminal desertion	
	Abuse of a child	
	Furnishing alcoholic beverages to a minor for illicit purpose	
	Aggravated juvenile delinquency	
	Felony Contributing to a child's misconduct or deprivation	

STATE OF MINNESOTA

LIST OF DISQUALIFYING EVENTS

Permanent Disqualifiers <i>*regardless of the level</i>	15-year disqualifiers <i>*must be felony level</i>	10-year disqualifiers <i>*gross misd. Level offense</i>	7 year disqualifiers <i>*misdemeanor level offense</i>
Violation of Predatory offender reg. Law	Wrongfully obtaining assistance	Wrongfully obtaining assistance	Wrongfully obtaining assistance
Murder 1 st , 2 nd and 3 rd degree	False representation/concealment of facts	False representation/concealment of facts	False representation/concealment of facts
Manslaughter 1 st and 2 nd	Food stamp fraud	Food stamp fraud	Food stamp fraud
Assault 1 st or 2 nd	Felon-ineligible to possess firearm	Criminal vehicular homicide and injury	Criminal vehicular homicide and injury
Domestic Abuse	Criminal vehicular homicide and injury	Assault 1 st & 2 nd degrees	Assault 1 st & 2 nd degrees
Spousal abuse, child abuse or neglect or a crime against children	Suicide (??assistance w)	Assault 3 rd and 4 th degrees	Assault 3 rd and 4 th degrees Assault in the 5 th
Domestic abuse by strangulation	Assault 3 rd and 4 th degrees	Assault in 5 th (repeat offense)	Domestic assault
Great bodily harm caused by distribution of drugs	Assault in 5 th (repeat offense)	Assault in the 5 th by a caregiver against a vulnerable adult	Financial exploitation of a vulnerable adult
Aggravated robbery	Crimes committed fro benefit of a gang	Domestic assault	Failure to report maltreatment of vulnerable adult
Kidnapping	Criminal abuse of a vulnerable adult	Mistreatment of persons confined	Assault of unborn child in the 3 rd degree
Murder of an unborn child in 1 st , 2 nd and 3 rd degrees	Financial exploitation of a vulnerable adult	Mistreatment of residents or patients	Coercion
Prostitution Solicitation, inducement and promotion	Use of drugs to injure or facilitate crime	Criminal abuse of a vulnerable adult	Violation of an order of protection
Other prohibited Acts*	Simple robbery	Criminal neglect of vulnerable adult	Medical assistance fraud
Criminal sexual conduct in 1 st , 2 nd , 3 rd , 4 th & 5 th degrees	False imprisonment	Financial exploitation of a vulnerable adult	Theft
Criminal sexual predatory conduct	Manslaughter of unborn child 1 st & 2 nd degrees	Failure to report maltreatment of vulnerable adult	Bringing stolen goods into Minn.
Solicitation of children to engage in sexual conduct	Assault of unborn child 1 st & 2 nd degree	Abduction	Identity theft
Incest	Injury or death of an unborn child in the commission of a crime	Attempt to coerce	Receiving stolen property
Felony malicious punishment of a child	Coercion	Minor engaged in prostitution (other prohibited acts)	Issuance of dishonored check

Permanent Disqualifiers <i>*regardless of the level</i>	15-year disqualifiers <i>*must be felony level</i>	10-year disqualifiers <i>*gross misd. Level offense</i>	7 year disqualifiers <i>*misdemeanor level offense</i>
Felony neglect or endangerment of a child	Attempt to coerce	Disorderly house	Insurance Fraud
Arson in the 1st	Medical assistance fraud	Malicious punishment of a child	Dangerous weapons Spring guns
Drive by shooting	Aggravated 1 st degree or 1 st degree tampering w/ witness	Neglect or endangerment of a child	Interference with privacy
Felony harassment , stalking	Theft	Medical assistance Fraud	Obscene or harassing telephone calls
Shooting at or in a public transit vehicle or facility	Possession of shoplifting gear	Theft	Letter, telegram, or package; opening , harassment
Indecent Exposure inv. Minor	Bringing stolen items into Minn.	Bringing stolen items into Minn	Fraud in obtaining credit
Use of minors in sexual performance	Identity Theft	Identity Theft	Financial transaction card fraud
Possession of pictorial representation of minors	Receiving stolen property	Receiving stolen property	Indecent exposure not involving a minor
*	Issuance of dishonored checks	Issuance of dishonored checks	Harmful materials, dissemination and display to minors
	Arson 2 nd & 3 rd degrees	Burglary	
	Burglary	Possession of burglary tools	
	Possession of burglary tools	Insurance Fraud	
	Insurance Fraud	Check forgery/offering forged check	
	Aggravated forgery	Dangerous weapons	
	Forgery	Riot	
	Check forgery/offering forged check	Disorderly conduct against a vulnerable adult	
	Obtaining signature by false pretense	Interference with privacy (repeat offenses)	
	Dangerous weapons	Harassment and stalking	
	Machine guns and short barreled shotguns	Fraud in obtaining credit	
	Adulteration	Indecent exposure not involving minors	
	Riot	Indecent literature distribution	
	Terroristic threats	Harmful materials, dissemination and display to minors	
	Fraud in obtaining credit	Violation of protection order	
	Financial transaction card fraud		

Permanent Disqualifiers <i>*regardless of the level</i>	15-year disqualifiers <i>*must be felony level</i>	10-year disqualifiers <i>*gross misd. Level offense</i>	7 year disqualifiers <i>*misdemeanor level offense</i>
	Indecent exposure not involving minors (repeat offns)		
	Obscene materials and performances—distribution and exhibition		
	Certain persons cannot carry possess firearms		
	Drug convictions		
	Felony level conviction involving drus /alcohol		

Other Potentially Disqualifying Conditions:

- Involuntary termination of parental rights
- Aiding or abetting, attempt or conspiracy to commit any of the offenses listed above
- Crimes from any other jurisdiction which are equivalent to Minnesota crimes

*disqualifications are based upon conviction, admission to a crime, or an Alford plea

*unless otherwise distinguished, Minnesota disqualification doesn't take into account the 'level' of offense

*for some crimes, a preponderance of evidence is the only standard

Allow for an Administrative Determination in which determining an 'immediate risk of harm' is assessed.

State of New Mexico

List of Disqualifying Events

The following *Felony* convictions disqualify an applicant, caregiver or hospital caregiver from employment, or contractual services with a caregiver:

- Homicide
- Trafficking, or trafficking in controlled substances
- Kidnapping, false imprisonment, aggravated assault or aggravated battery
- Rape, criminal sexual penetration
- Criminal sexual contact, incest, indecent exposure or other Felony sexual offenses
- Crimes involving adult abuse, neglect or financial exploitation
- Crimes involving child abuse or neglect
- Crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud or receiving stolen property
- An attempt, solicitation or conspiracy involving any of the felony's listed.

STATE OF OKLAHOMA

LIST OF DISQUALIFYING EVENTS

I. If the results of a criminal background check reveal that the subject person has been convicted of any of the following offenses, the employer shall not hire or contract with the person:

- Assault, battery, or assault and battery with a dangerous weapon;
- Aggravated assault and battery
- Murder or attempted murder
- Manslaughter, except involuntary manslaughter
- Rape, incest or sodomy
- Indecent exposure and indecent exhibition
- Pandering
- Child Abuse
- Abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person
- Burglary in the first or second degree
- Robbery in the first or second degree
- Robbery or attempted robbery with a dangerous weapon, or imitation firearm
- Arson in the first or second degree
- Unlawful possession or distribution or intent to distribute unlawfully, schedule I through V drugs
- Grand Larceny
- *Petit Larceny or shoplifting within the past 7 years*

STATE OF OREGON

LIST OF DISQUALIFYING EVENTS

Permanent Disqualifiers		10-year disqualifiers		5 year disqualifiers
Escape I & II		Bribe Giving & Receiving		Unsworn falsification
Hindering Prosecution		Perjury		Obstructing gov't or judicial administration
Criminal Homicide		False swearing		Resisting Arrest
Aggravated Murder		Public investment fraud		Criminal trespass II
Murder		Escape III		Criminal mischief III
Manslaughter I & II		Unauthorized departure		Unlawful telephone solicitation
Criminally negligent homicide		Supplying contraband		Abuse of venerated objects
Assault I, II, III & IV		Failure to Appear I & II		Telephonic harassment
Strangulation		Interfering with a peace officer		Misconduct with emergency calls
Criminal mistreatment I & II		Bribing a witness Bribe receiving by a witness		Animal abandonment
Female genital mutilation		Tampering with witness Tampering with physical evidence Tampering with public records		Operate uncertified foster home
Assault of Public Safety Officer		Compounding		Criminal driving while suspended or revoked
Unlawful use of an electrical stun gun, tear gas or mace I		Simulating legal process		DUII (intoxicants)
Kidnapping I & II		Criminal impersonation Criminal Impersonation of Police off.		Operating boat while under influence
Custodial Interference I		Possession of false LE identification		Conviction for attempt, solicitation or conspiracy to commit a crime
Rape I, II & III		Initiating & giving a false report		Any crime in another jurisdiction equivalent to ORE. laws
Sodomy I & II		Official Misconduct I & II		Combination of any 3 crimes not listed, which committed on three different dates w/in 5 yrs
Unlawful Sexual Penetration I & II		Misuse of Confidential Information		
Sex Abuse I, II & II		Menacing		
Bigamy		Recklessly endangering another		
Incest		Unlawful use of an electrical stun gun, tear gas or mace II		
Abandonment of child		Custodial Interference II		
Buying or selling a person under 18		Coercion		
Child neglect I & II		Contributing to sexual delinquency of a minor		
Criminal Non Support		Sexual misconduct		
Endangering welfare of minor		Public indecency		
Using a child in display of sexually explicit conduct		Private indecency		
Dealing sexual condition of child		Invasion of personal privacy		
Sale sexual condition of child		Violation of stalking prot. order		
Paying for sexual view of child		Theft I, II, & III		

Permanent Disqualifiers		10-year disqualifiers		5 year disqualifiers
Encouraging child sexual abuse I, II & III		Theft by deception and receiving		
Possession of materials depicting sexually explicit conduct of child I & II		Unauthorized use of vehicle		
Failure to report child porn		Criminal possession of rented or leased personal property		
Stalking		Mail theft or receipt of stolen mail		
Aggravated Theft I		Burglary II		
Theft by Extortion		Possession of Burglar's tools		
Theft of Services		Criminal trespass I		
Burglary I		Criminal trespass w/ firearm		
Arson I		Unlawful entry into motor vehicle		
Robbery I, II & III		Arson II		
Cellular Counterfeiting I		Reckless burning		
Treason		Criminal Mischief I & II		
Riot		Interfering with Police Animal		
Abuse of a Corpse I & II		Computer Crime		
Intimidation I & II		Forgery I & II		
Unlawful use of weapon		Crim. Poss. of forged instrument I & II		
Possession of weapon by certain felons		Criminal poss. of forgery device		
Unlawful possession of machine guns, certain firearms		Criminal simulation		
Possessions of weapons by inmates		Fraud. obtaining signature		
Firearms used in a felony		Fraud. use of credit card		
Racketeering		Negotiating a bad check		
Promoting & Comp. Prostitution		Possession of fraud. comm. device		
Sadomasochistic abuse or sexual conduct in a live show		Unlawful factoring of credit card transaction		
Furnishing & sending obscene materials to minors		Falsifying business records		
		Sports Bribery		
Exhibiting an obscene performance to minor		Misapplication of entrusted property		
Displaying obscene material		Issuing a false financial stmtnt		
Adult using minor in commission of controlled substance offense		Obtaining execution of documents by deception		
Animal Abuse I & II		Obtaining contents of comm.		
Aggravated Animal Abuse		Interception of communication		
Sexual Assault of Animal		Improper use of 911		
Failure to report as sex offender		Interference with making a report		
Sale of drug paraphernalia		Cellular Counterfeiting II & III		
Providing hypodermic device to minor		Making false claim for health care payment		
Possession of precursor w/intent to manufacture		Identity Theft		
Application of controlled substance to body of another person		Disorderly Conduct		
Prohibited acts regarding drug crimes		Harassment		
Prohibited acts for registrants (state board of pharmacy—felonies)		Abuse of a memorial to the dead		
Distribution to minors		Interfering with public transp.		
Penalty for manuf. or delivery of controlled sub. near school		Negligently wounding another		
Prohibited acts re: practice of med.		Pointing a firearm at another		

Permanent Disqualifiers		10-year disqualifiers		5 year disqualifiers
Any Federal Crime		Carrying a concealed weapon		
		Unlawful Possession of firearm		
		Possession of firearm or dangerous weapon in public building or court facility		
		Possession of destructive device		
		Limitation and conditions for sale of firearms		
		Sale or gift of explosives to children		
		Throwing an object off overpass I, II		
		Unlawful paramilitary activity		
		Prostitution		
		Public display nudity/sex for advertising		
		Tampering with drug records		
		Freq. Place where controlled substances are used		
		Animal neglect I & II		
		Animal fighting		
		Concealing the birth of an infant		
		Unlawfully obtaining public asst.		
		Submitting wrongful claim for public assistance		
		Unlawfully obtaining food stamps		
		Penalty for plcmnt of children in violation of compact		
		Unauthorized use and custody of records (TANF)		
		Sharing Assistance--Prohibited		
		Spreading disease willfully		
		Providing liquor to persons under 21		
		Failure to report precursor and missing precursor substance		
		Illegally selling drug equipment		
		Providing false information on precursor substance report		
		Unlawful delivery of imitation controlled substance		
		Prohibited acts generally—misd. Drug crimes		
		Prohibited acts for registrants—misd. Crimes board of pharmacy		
		Prohibited acts involving records and fraud		
		Commercial drug offense		

Permanent Disqualifiers		10-year disqualifiers		5 year disqualifiers
		Failure to certify child care facility		
		Forging, altering or unlawfully producing title or registration		
		False information to police		
		Reckless driving		
		Fleeing or attempting to flee		
		Failure to perform duties of driver when property is damaged		
		Failure to perform duties of driver to injured persons		
		Possession of stolen vehicle		
		Failure to perform duties of operator (boat)		
		Unclassified misd. Not listed elsewhere.		
		Crime of attempt, conspiracy to commit a crime		
		Crimes in other jurisdictions equiv. To Oregon state laws		

Other Potentially Disqualifying Conditions:

- False Statement: A false statement by the subject individual to the qualified entity, authorized designees or department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.
- Sex Offender
- Warrants
- Deferred sentence, diversion program or probation or parole
- Probation or Parole Violations
- Unresolved Arrests, charges or indictments

STATE OF NEVADA

LIST OF DISQUALIFYING EVENTS

Basic Disqualifying Events	7-year Disqualifying Events
Murder	Distribution of any controlled substance or dangerous drug (can be either state or federal law)
Voluntary manslaughter	Violation of any provision of the State Medicaid Plan
Mayhem	A criminal offense under laws governing Medicaid and Medicare
Assault with intent to kill or to commit sexual assault or mayhem	Fraud
Sexual assault	Theft
Statutory sexual seduction	Embezzlement
Incest	Burglary
Lewdness	Robbery
Indecent exposure	Fraudulent conversion or misappropriation of property
Any 'other' sexually related crime	Any other Felony involving use of a firearm or other deadly weapon
Abuse or neglect of a child	
Contributory delinquency	
Abuse, neglect, exploitation or isolation of older persons or vulnerable persons	

STATE OF WASHINGTON

LIST OF DISQUALIFYING EVENTS

Basic Disqualifiers	3-year Consideration	5 year consideration	Civil Adjudication
Crimes against Children or other persons			Domestic violence
•Aggravated Murder	Simple Assault	Forgery	Abuse
1 st or 2 nd degree Murder	Assault in the 4 th degree		Sexual abuse
1 st or 2 nd degree kidnapping	Prostitution		Neglect
1 st , 2 nd or 3 rd degree assault	3 rd degree theft		Abandonment
1 st , 2 nd or 3 rd degree assault of a child	2 nd degree theft		Violation of professional licensing standards regarding a child or vulnerable adult
1 st , 2 nd or 3 rd degree rape			Exploitation
1 st , 2 nd or 3 rd degree rape of a child			Financial exploitation of child or vulnerable adult
1 st or 2 nd degree robbery			
1 st degree arson			
1 st degree burglary			
1 st or 2 nd degree manslaughter			
1 st or 2 nd degree extortion			
Indecent liberties			
Incest			
Vehicular homicide			
1 st degree promoting prostitution			
Communication with a minor (?)			
Unlawful imprisonment			
Simple Assault			
Sexual exploitation of minors			
1 st or 2 nd degree criminal mistreatment			
Endangerment w/ controlled substance			
Child abuse & neglect			
1 st or 2 nd degree custodial interference			
1 st or 2 nd degree custodial sexual misconduct			
Malicious harassment			
1 st , 2 nd or 3 rd degree child molestation			
1 st , 2 nd degree sexual misconduct with a minor			
Patronizing a juvenile prostitute			
Child abandonment			
Promoting pornography			
Selling or distributing erotic material to a minor			
Custodial assault			

Basic Disqualifiers	3-year Consideration	5 year consideration	Civil Adjudication
Violation of a child abuse restraining order			
Child buying or selling prostitution			
Felony indecent exposure			
Criminal Abandonment			
Crimes relating to drugs			
• Manufacture drugs			
Delivery of drugs			
Possession w/ intent to manufacture or deliver a controlled substance			
Crimes relating to financial exploitation			
• 1 st , 2 nd or 3 rd degree extortion			
1 st , 2 nd or 3 rd degree theft			
1 st , or 2 nd degree robbery			
Robbery			
Forgery			

Process:

I. In the State of Washington, facilities must require that persons having unsupervised access with a vulnerable adult **disclose** the following information:

A. Whether the person has been convicted of a crime. “Convictions” for this purpose fall into following categories:

- Conviction of crimes against children or other persons
- Conviction of all crimes relating to financial exploitation
- Conviction of all crimes relating to drugs

B. Whether the person has had any findings made against him/her in any civil adjudicative proceedings. The Civil adjudication proceeding is:

- A judicial or administrative adjudicative proceeding that results in a finding of or upholds an agency decision as specified in the graph above.
- Similar to what Montana calls an Administrative Fair Hearing.
- May or may not include a criminal proceeding.

‘Trust but verify’ process—fingerprint background check is conducted following the disclosure statement

II. Washington State law indicates that persons who provide care and treatment to vulnerable adults shall not:

- be the respondent in an active protective order nor have been convicted of:
- Crimes against a children and other persons
- Crimes relating to financial exploitation
- found in any disciplinary board final decision to have abused a vulnerable adult.

MOST COMMON OCCURRING DISQUALIFYING EVENTS

Alaska, Arizona, Idaho, Kansas, Minnesota, New Mexico, Oklahoma, Oregon, Nevada and Washington

Unconditional or permanent disqualifier	Montana comparison	Most Common Events in "aging out" circumstances
Murder—any degree	Homicide (chp 5, part 1)	Lesser degrees of assault
Abuse, neglect or exploitation of vulnerable adult	Theft, Forgery, Assault (if physical) or Medicaid Fraud *Persons can also be charged under 53-2-825, MCA Elder Abuse Statute (combines crimes)	Lesser degree of battery
Arson	Arson (chp 6,p1)	Burglary
Incest	Incest (chp 5, p 5)	Lesser drug crimes
Kidnapping	Kidnapping (ch5, p3)	Insurance Fraud
Manslaughter	Mitigated deliberate homicide	Wrongfully obtaining public assistance
Assault	Assault (chp 5, p2)	Lesser degrees of domestic violence
Battery	Assault (chp 5, p2)	Shoplifting/petit larceny
Rape	Sexual intercourse w/o consent (chp 5, p5)	Lesser degrees of theft/embezzlement
Robbery	Theft	Prostitution
Stalking	Stalking (under assault chp5 part2)	Obscenity crimes
Theft	Theft (chp6, p3)	
Sexual Crimes (list is long) *Including failure to register as a sexual offender	Sexual Crimes (Chp 5, p5)	
Prostitution—engaging in and promoting	Prostitution Aggravated Promotion of Prostitution (chp 5 p 6)	
Domestic Abuse	Assault—Partner/Family Member Assault (Chp 5 p2)	
Drug Crimes (list is long)	Dangerous Drugs Chp 9, part 1	
Child Abuse	Assault and offenses against the family	
Forgery	Theft Chp 6, p3	

DISQUALIFYING EVENTS

SJ7 Workgroup

Recap of October Meeting:

During the October 2007 meeting, Jeff Buska introduced and identified the work the agency prepared on disqualifying events as identified in the State surveys. This was a one page table titled "Chart: Exclusionary criteria for the varying states" dated October 23, 2007.

The purpose of this chart was to introduce the topic for thought and consideration by the workgroup. The department was asked to prepare a comparison of a smaller group of states that are similar to Montana and have disqualifying events. In addition, the workgroup requested the department to prepare a proposal for their consideration and discussion of disqualifying events based upon Montana law.

Department Assignment:

The information that was requested is included in two documents titled (1) Most Common Disqualifying Events and (2) Montana Disqualifier List (worksheet). A third document was also prepared which shows the details concerning the disqualifying criteria for the 10 states reviewed in the October meeting.

The *worksheet document* contains the department's proposal for defining the disqualifying events that would apply for Montana. In preparing this document, the department reviewed the 10 states specified by the workgroup and compared those disqualifiers to what exists in Montana law. The result of that comparison is contained in the column entitled **Permanent Disqualifier**. The workgroup will see that several of the 10 states also have what is known as "aging out offenses" in which certain crimes are only considered a disqualifier for a designated number of years. Most of the offenses considered 'aging out offenses' are typically crimes which are of lesser degree or level as the permanent disqualifiers or are crimes that are naturally lower level offenses. The *worksheet document* contains a column entitled "**aged out offense**" which includes those lower level crimes pertaining to Montana.

December Tasks:

It is the recommendation of the department that the workgroup review and decide those crimes which will become permanent disqualifiers. The workgroup should also review whether there should be criteria of "aged out" offenses, and if so, which offenses would apply and then define the time lines accordingly.

November 30, 2007

Montana Disqualifier List
FOR DISCUSSION PURPOSES ONLY
December 2007

Montana Crimes	Permanent Disqualifier	Aged Out Offense	How Long?
Chap 5--Offenses Against a Person			
Homicide			
Deliberate Homicide	X		
Mitigated Deliberate Homicide	X		
Negligent Homicide	X		
Aiding or soliciting Suicide		X	
Vehicular Homicide while under the influence	X		
Assault and related offenses			
Assault	X		
Intimidation		X	
Negligent Vehicular Assault	X		
Criminal Endangerment		X	
Partner/family Member Assault—includes violation of no contact order		X	
Partner/family Member Assault	X		
Assault on a peace officer or other judicial officer	X		
Assault on a sports official		X	
Assault with a weapon	X		
Stalking	X		
Surreptitious visual observation or recordation		X	
Aggravated assault	X		
Mistreating Prisoners			
Negligent Endangerment	X		

	Permanent Disqualifier	Aged Out Offense	How Long?
Assault on a minor	X		
Assault with bodily fluid			
Malicious intimidation		X	
Kidnapping			
Unlawful restraint		X	
Kidnapping	X		
Aggravated Kidnapping	X		
Custodial Interference		X	
Subjecting another to involuntary servitude		X	
Trafficking of persons for involuntary servitude		X	
Robbery	X		
Sexual Crimes			
Sexual Assault	X		
Sexual intercourse w/o consent	X		
Indecent Exposure	X		
Incest	X		
Offenses Against the Family			
Prostitution	X		
Aggravated Promotion of Prostitution	X		
Promoting Prostitution	X		

	Permanent Disqualifier	Aged Out Offense	How Long?
Bigamy			
Marrying a Bigamist			
Nonsupport		X	
Unlawful Transactions w/ children	X		
Unlawful attempt to purchase or possess intoxicating substance			
Sexual Abuse of children	X		
Endangering welfare of children	X		
Violating of order of Protection		X	
Interference w/ parent-child contact		X	
Aggravated interference w/ parent-child contact		X	
Parenting interference		X	
Tobacco possession or consumption by persons under 18 yoa			
Chapter 6—Offenses Against Property			
Criminal Mischief and Arson	X--Arson		
Criminal trespass and burglary		X	
Theft			
Theft	X		
Offender's interest in the property			
Obtaining communication services with intent to defraud		X	
Aiding the avoidance of telecommunication charges			
Unauthorized use of motor vehicles			

	Permanent Disqualifier	Aged Out Offense	How Long?
Failure to return rented or leased personal property			
Unlawful use of a computer			
Medicaid Fraud	X		
Defrauding Creditors			
Issuing a bad check		X	
Chain distributor schemes			
Obscuring the identity of a machine			
Theft of Identity	X		
Theft or lost or mislaid property		X	
Theft of labor or services w/intent to defraud			
Unauthorized acquisition or transfer of food stamps		X	
Theft by disposal of stolen property		X	
Deceptive practices		X	
Forgery	X		
Illegal branding or altering or obscuring a brand			
Money laundering		X	
Chapter 7—Offenses against Public Administration			
Bribery and Corrupt Influence			
Bribery in official and political matters			
Threats /improper influence in official & political matters			
Compensation for past official behavior			
Gifts to Public servants by persons subject to their jurisdiction			
Perjury and other falsification in official matters			

	Permanent Disqualifier	Aged Out Offense	How Long?
Perjury			
Unsworn falsification to authorities			
False reports to law enforcement authorities			
Tampering with witnesses and informants		X	
Tampering with public records or information			
Impersonation of a public servant			
False swearing			
False alarms to agencies of public safety			
Tampering w/or fabricating physical evidence		X	
False claim to public agency			
Obstructing governmental Operations			
Resisting arrest			
Obstructing a peace officer or other public servant		X	
Obstructing justice			
Failure to aid a peace officer			
Compounding a felony		X	
Escape		X	
Transferring illegal articles—unauthorized communication			
Bail jumping			
Criminal contempt		X	
Official Misconduct			
Employer Misconduct			
Chapter 8—Offenses Against Public Order			

	Permanent Disqualifier	Aged Out Offense	How Long?
Conduct disruptive of public order			
Disorderly conduct			
Riot			
Criminal Incitement			
Civil Disorder—prohibitive activities obstructing health care facility access			
Public nuisance			
Failure to yield party line			
Failure of disorderly persons to disperse			
Incitement to Riot			
Bringing armed men into the state			
Creating a hazard			
Illegal posting of state and federal land			
Offensive, indecent and inhumane conduct			
Obscenity		X	
Public display or dissemination of obscene material to minors		X	
Harming a police dog			
Causing animals to fight—owners, trainers and spectators			
Cruelty to animals		X	
Criminal defamation			
Privacy in communications			
Bribery in communications			
Bribery in contests			
Desecration of Flags			
Unlawful automated telephone solicitation			

	Permanent Disqualifier	Aged Out Offense	How Long?
Aggravated animal cruelty		X	
Weapons*			
Possession or use of machine gun in connection with a crime	X		
Possession or use of a machine gun for offensive purposes	X		
Unlawful possession of firearm by convicted persons	X		
Lifetime firearms supervision of certain convicted persons			
Carrying concealed weapons		X	
Possession of deadly weapon by prisoner or youth in a facility	X		
Chapter 9—Dangerous Drugs			
Offenses involving Dangerous Drugs			
Criminal distribution of dangerous drugs	X		
Criminal possession of dangerous drugs	X (if a felony)	X (if the crime is misd.)	
Criminal possession with intent to distribute	X(if a felony)	X (if the crime is misd	
Fraudulently obtaining dangerous drugs		X	
Altering labels on dangerous drugs		X	
Criminal poss precursors to dangerous drugs	X	X(if the crime is misd	
Criminal distribution of dangerous drugs on or near school property	X		
Criminal production or manufacture of dangerous drugs	X		
Criminal distribution of imitation dangerous drug	X		
Criminal possession of imitation dangerous drug with the purpose to distribute	X		
Criminal advertisement of imitation dangerous drug		X	
Criminal manufacture of imitation dangerous drug	X		

	Permanent Disqualifier	Aged Out Offense	How Long?
Criminal possession of toxic substances		X (if a misd.)	
Continuing criminal enterprise	X		
Carrying dangerous drugs on train		X	
Operation of unlawful clandestine laboratory	X		
Title 61—Driving Under the Influence of Alcohol or Drugs (61-8-401)			
DUI		X	
**Habitual Offender		X	

- In Montana, crimes fall into Felony or Misdemeanor level at the penalty phase. If jail time for the offense is *one year or more* then the crime is classified as a **Felony**. If the jail time for the offense is *under one year*, then the crime is classified as a **Misdemeanor**.

Question: Do we want the permanent disqualifiers to be classified as Felony only???

- * **Weapons**—most of these offenses should constitute criminal conduct that can disqualify a person from licensure due to the violent behavior involved.

** Habitual Offender –DUI Title 61-8-732, MCA allows for certain treatment options depending upon the number of convictions. For example, a 1st time offender must be evaluated for chemical dependency and if found to be chemically dependent, must attend treatment. A 2nd or subsequent offense—the offender must attend treatment and is then monitored for at least one year. In these cases, the sentence is typically suspended.